

By Not Investigating the U.S. For War Crimes, the International Criminal Court Shows Colonialism Still Thrives in International Law

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On April 5, the United States [revoked the visa of the International Criminal Court's \(ICC\) chief prosecutor, Fatou Bensouda](#), for her attempts to open an investigation into alleged war crimes committed by the U.S. in Afghanistan. A week later, [judges at the ICC rejected Bensouda's request](#) to open a probe into U.S. involvement in Afghanistan.

While rights advocates condemned this move as amounting to U.S. interference in [the workings of the ICC](#), it's more alarming than mere obstruction — and is rooted in the pre-existing hierarchy and embedded colonial structures in international legal order.

Bensouda's visa revocation underscores the existing systematic inequality in international legal order. This is rooted in the presumed hierarchy by a group of elite nations that have dominated international order from a position of assumed racial, cultural, political, historical, material, economic and legal superiority.

These developments come in light of comments made by the Trump administration's national security advisor, John Bolton, who [delegitimized the role of the ICC](#) in a speech he delivered in September 2018. He said that "the U.S. will take any means necessary" to overcome "unjust prosecution by this illegitimate Court."

Countries like the U.S. have always enjoyed dominance through this presumed superiority, enabling them to suggest other nations are like-minded when it comes to the international legal order.

The U.S. and other powerful nations have not only been successful in maintaining the status quo of imbalance inherent in international law, but have also been instrumental in establishing the rules governing that legal order.

With tectonic political shifts across the world, the ICC's representatives — and jurists like Bensouda — represent some of the last vestiges of resisting the dominant global legal order by attempting to hold the West accountable for their transgressions in the global South.

Unfortunately, however, the Court's unwillingness to move beyond its imperial roots is evident from the decision to reject Bensouda's request. The ICC has blatantly redefined the notion of "justice" and has been [preoccupied](#) with African states while turning a blind eye to equally serious crimes committed by the U.S.

Meddling is routine

Needless to say, [U.S. interference and intervention in dozens of sovereign nation states is commonplace](#). Meddling with the functioning of one of the highest judicial bodies in the world is therefore a familiar pattern of American supremacy in the international legal order.

The move by the U.S. to revoke Bensouda's visa is an expression of that supremacy through intimidation and bullying of representatives of international institutions. However, it also points to the U.S. wielding power in the age of [its new-found sense of self-alienation](#), which manifests into ongoing imperialist tendencies that influence the decisions made by international institutions.

This perpetuates the West's practice and tendency to use global legal institutions such as the International Criminal Court to continuously persecute and demonize the global South.

Bensouda's efforts have certainly not been halted by the U.S. government's move against her. However, the revocation of her visa and the Court's validation of such a move by rejecting Bensouda's request raises questions on broader justice issues, what is being considered within the purview of the ICC, and the legitimacy of international law.

Such tactics should not come as a surprise. The U.S. has had [a long history of supposed "exceptionalism"](#) facilitated by international law when it comes to its participation in the global legal order and its violations of international humanitarian and human rights law with impunity.

For instance, the U.S. [Supreme Court](#) in 2006 qualified the so-called war on terror as a form of armed conflict. However, as Jeremy Waldron, a professor at New York University School of Law, pointed out, [the U.S. consistently violated the Geneva Conventions during the war through extraordinary rendition techniques and unlawful detention](#). This was done under the pretext that the particular category of armed conflict that the U.S. was involved in lacked explicit mention in the Geneva Conventions.

Disregarding international law

Bensouda's role in investigating these alleged war crimes has the potential to shine a spotlight on the [historical American practice of disregarding international law](#).

By engaging in bullying tactics, the U.S. is now reaching a new level of abrogation of international legal order. This could not only prevent the Court from being able to investigate the alleged violations, but also has the potential to reinforce its hegemonic selective power when it comes to the implementation of international criminal law.

U.S. dominance in the global legal order does not stop at its borders. It has a ripple effect, compelling other major powers with military, economic and political clout to follow suit.

We've witnessed similar practices by Israel as it denies United Nations Human Rights Council investigators entry to the occupied territories of Palestine as they investigate alleged war crimes and crimes against humanity [in Gaza](#). And in some cases there has been systematic pressure from the highest offices in the UN pushing for withdrawal of [scholarly reports](#) on the situation in the Middle East.

While past incidents have often resulted in the [resignation](#) of the individuals who have been

blocked by these forces, it's refreshing to see Bensouda's resistance "[without fear or favour.](#)"

The U.S. and Israel have been particularly effective in resisting the legitimacy of the global legal order. [By recognizing](#) Israel's illegal annexation of Golan Heights, the U.S. administration under President Donald Trump is legitimizing contempt towards international legal principles.

At the heart of this lies international law's deep connections to structures of power and inequality. Thankfully, international legal order is a contested space in which committed jurists like Bensouda are still fighting oppression through their unapologetic acts of resistance.

It is now up to the ICC to change its role from a mechanism that facilitates inequality in international law to one that perpetuates and supports resistance for justice.

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